



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 14-02282
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: John V. Berry, Esq.

04/14/2015

Decision

CURRY, Marc E., Administrative Judge:

Given Applicant’s deep and longstanding relationships in the United States, he can be expected to resolve any potential conflict of interest that may arise stemming from his relatives, who are citizens and residents of Pakistan, in favor of the U.S. interest. Clearance is granted.

Statement of the Case

On September 18, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines B, foreign influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG).

Applicant answered the SOR on October 10, 2014, admitting the allegations and requesting a hearing. On January 12, 2015, I received the case assignment. DOD issued

a notice of hearing on December 21, 2015, scheduling it for February 10, 2015. I held the hearing as scheduled. During the hearing, I received five Government exhibits, marked as Government Exhibits (GE) 1 through 5, and ten Applicant exhibits, marked as Applicant Exhibits (AE) A through J. Also, I received the testimony of Applicant and two character witnesses, and took administrative notice, at Department Counsel's request, of the adjudicative facts set forth in five documents, marked as Hearing Exhibit (HE) I through V. DOHA received the hearing transcript (Tr.) on February 19, 2015.

Findings of Fact

Applicant is a 33-year-old married man with an infant son. Applicant was born, raised, and educated in the United States. He finished college in 2005, earning a bachelor's of science degree in information technology. (AE F) He has been working as an information technology manager since 2008. During this period, he has performed the same tasks for two employers, as his current employer purchased his previous employer in 2010. (Tr. 16-17)

Applicant is highly respected on the job. According to his supervisor, he is a "stellar employee." (Tr. 60) His employer's director of security characterizes him as "a steadying influence on the information technology department" during crises. (Tr. 54) Applicant has earned multiple awards and accolades during his career. (AE I) Applicant has held a Top Secret clearance since 2009. (Tr. 17)

Applicant is the son of Pakistani-American immigrants. His older brother emigrated from Pakistan with his parents. (GE 1 at 18-20) Now, his parents and brother are naturalized American citizens. (Tr. 48) Applicant's wife is a citizen of Pakistan. He met her in 2005 and they got married in 2010 in Pakistan. (Tr. 19) She immigrated to the United States in November 2011, and has obtained permanent resident status. (AE C) Their child was born in the United States.

Applicant's wife is working toward an associate's degree in business at the local community college. (Tr. 22) She has no assets or investments in Pakistan and intends to renounce her citizenship with Pakistan as soon as she becomes a naturalized U.S. citizen. Her application for U.S. citizenship is pending.

Applicant's parents-in-law are citizens and residents of Pakistan. His father-in-law is a farmer, and his mother-in-law is a homemaker. Applicant's wife talks to them approximately every two weeks. (Tr. 27) Applicant rarely talks to them. They do not speak fluent English, and Applicant is not fluent in any languages spoken in Pakistan, making it difficult to communicate with them. (Tr. 48) Applicant and his wife provide no monetary support to his in-laws. (Tr. 28)

Applicant's uncle, a citizen and resident of Pakistan, was a general in the Pakistani army. (Answer) He has been retired for eight to ten years. (Tr. 29, 48) Applicant last talked with him approximately three and a half years ago. (Tr. 30) Their conversations are limited to family and social topics. (Tr. 30)

Applicant owns his home. He has travelled to Pakistan approximately once every other year for the past seven years. His last visit was in February 2013. (GE 1 at 28, 31,34,37-38) He has reported each trip to his employer. (Tr. 43)

Administrative Notice

Although Pakistan is a parliamentary federal republic, its human rights record remains poor. (HE V at 1-2; HE V at 1) Several terrorist groups continue to operate in parts of Pakistan with impunity, and the U.S. Department of State considers it to be a terrorist safe haven. (HE I at 3) In August 2014, the U.S. Department of State warned U.S. citizens to defer all nonessential travel to Pakistan, as the presence of several terrorist groups posed a potential danger to U.S. citizens through Pakistan. (HE IV at 1)

In May 2011, U.S. forces killed Osama bin Laden, mastermind of the 911 attacks and numerous other terrorist attacks around the world. He had been living in hiding in an affluent suburb of Islamabad, Pakistan's capital, in a home eight times larger than any homes in the community, reinforced by extraordinary security measures including 12 to 18 foot walls topped with barbed wire and two security gates. (HE III at 3)

Despite these problems, Pakistan continues to cooperate on a variety of issues including counterterrorism, weapons non-proliferation, and bilateral trade. Since 2009, the United States has trained nearly 1,120 members of the Pakistan military. (AE J at 2) Also over the past five years, the United States has committed five billion dollars of foreign aid to Pakistan. (AE J at 1)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is

voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline B, Foreign Influence

Under this guideline, “foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest” (AG ¶ 6). Moreover, “adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism” (*Id.*).

Although the relationship between the United States and Pakistan has, at times, been tenuous over the years, the countries remain partners, cooperating in a broad range of areas including counterterrorism and economic development. Under these circumstances, it is unlikely that the government of Pakistan would seek to exploit one of its citizens living in the United States, such as Applicant’s wife. AG ¶ 7(d), “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion,” does not apply. I conclude that Applicant’s wife does not generate a security risk, and I resolve SOR subparagraph 1.a in his favor.

Pakistan is a haven for extremist, anti-American groups, including Al Qa’eda, which masterminded the 9/11 attack. Also, the U.S. Department of State continues to warn U.S. citizens not to travel there. AG ¶ 7(a), “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of, or resident in a foreign country if that contact creates a heightened risk of foreign exploitation,

inducement, manipulation, pressure, or coercion,” applies to Applicant’s relationship with his uncle, a retired general in the Pakistani army, and his parents-in-law.

Applicant has not talked to his uncle in nearly four years. Their past conversations were limited to social topics and the exchange of routine pleasantries. Under these circumstances, AG ¶ 8(c), “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation,” applies.

Although Applicant’s contact with his parents-in-laws is infrequent, there is a presumption that relationships with one’s in-laws are not casual. AG ¶ 8(c) does not apply to these relationships.

Applicant was born, raised, and educated in the United States. He is a homeowner, and he is a manager on the job who is well-respected by his peers. His community network of friends and family in the United States include his parents and brother, Pakistani immigrants who became U.S. citizens. I conclude that AG ¶ 8(b) “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest,” applies.

Considering the application of these mitigating conditions, together with the whole-person factors set forth in AG ¶ 2(a), I conclude Applicant has mitigated the security concern.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a - 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge